



Property Casualty Insurers  
Association of America

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2000 South River Road, Deerfield, IL 60015-3286

FTL

## STATEMENT

### PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

#### H.B. No. 5143 – AN ACT CONCERNING COVERAGE FOR PERISHABLE FOOD DONATED BY CERTAIN FOOD ESTABLISHMENTS

### COMMITTEE ON INSURANCE AND REAL ESTATE

February 21, 2012

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on HB 5143, which would require insurers to pay food spoilage claims when food is donated by a food establishment to a temporary shelter under certain circumstances. Our comments are provided on behalf of the member companies of PCI, a national property casualty trade association with over 1,000 member companies. PCI member companies provide 43 percent of Connecticut's property casualty insurance coverage.

While the intentions behind this bill are certainly laudable, PCI opposes this bill because its enactment would create major problems for insurers providing commercial food spoilage coverage in Connecticut and may increase costs for such coverage. As a general rule, insurance indemnifies the policyholder for losses resulting from a fortuitous event. This bill would require commercial insurers to pay spoilage claims when there is no loss, because the food has not spoiled when it is donated. Rather, this bill would require insurers to pay claims for anticipated potential losses, which is contrary to the basic underlying principles of the insurance contract. There is also no fortuitous event under this scenario because the event resulting in the claim is the voluntary donation of food by the policyholder to the emergency shelter.

Under this bill, while the food establishment makes the actual donation of food, it could be argued that it is really the insurer that would be making the charitable donation, because the insurer would be paying claims that it should not be obligated to pay so that food can be donated. Insurers also have liability concerns under this scenario because once the insurer pays the food spoilage claim, the insurer may be considered the owner of the food, thereby potentially making the insurer liable for any damages associated with such food. It should also be noted that, under this bill, the policyholder donating the food could potentially be eligible for a tax deduction for the donation, while also being compensated for the food by the insurer, thereby allowing an unwarranted windfall for the policyholder.

This bill could also likely result in substantial fraud. There is no definition of "temporary shelter" in the bill and food establishments could claim that a neighbor with a generator who opens their home to shelter neighborhood families is a "temporary shelter" to which the food could be claimed to be donated and a spoilage claim required to be paid under this bill. Additionally, once the food was donated, the insurer would have no mechanism by which to ensure the legitimacy of the claim.

There would be no way to verify the amount/value of the food donated. The policyholder could basically claim whatever amount they wanted up to the coverage limits and the insurer would just have to take the policyholder's word for it and write a check. Again, this is contrary to the basic principles of insurance under which only legitimate claims are paid after appropriate investigation, valuation and verification.

Payment of claims under this bill would hinge, in part, upon whether the electrical outage is forecast by the electric supplier to last longer than the time period for the safe handling of perishable food. This would seem to be a highly unreliable standard. Forecasts of when power will be restored are often inaccurate and dependent upon location, transmission and distribution issues and many other factors. Relying on these often inaccurate forecasts, may result in the donation of food which would not have spoiled and therefore should not be covered under a food spoilage claim. If insurers pay food spoilage claims that do not warrant payment, costs for this type of coverage will increase which will unnecessarily increase insurance costs for food establishments doing business in Connecticut.

For the foregoing reasons, PCI urges your Committee to not favorably advance HB 5143.